Supreme Court, U.S.
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No. 03-1448

In The

Supreme Court Of The United States

GARRICK TURNER,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION WITH ATTACHED APPENDIX

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QUESTION PRESENTED

Has this Court's recent decision in *Yarborough v. Alvarado*, No. 02-1684, slip op. (June 1, 2004), already resolved the question of whether the objective test, used to determine custody for purposes of entitlement to *Miranda* warnings, should be altered by factors such as a defendant's having reached the age of majority and having had no prior experience with law enforcement?

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OPINIONS BELOW

The Supreme Court of the State of Connecticut issued its opinion on January 20, 2004. This opinion is reported at 267 Conn. 414, 838 A.2d 947 (2004), and is reproduced in the petitioner's Appendix A. The Appellate Court of the State of Connecticut issued its opinion on January 29, 2002. This opinion is reported at 67 Conn. App. 708, 789 A.2d 1058 (2002), and is reproduced in the petitioner's Appendix B. The Superior Court of the State of Connecticut issued its opinion denying the petitioner's Motion to Suppress on April 14, 2000. A copy of this opinion is located in the respondent's Appendix at A1.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATUTORY PROVISIONS INVOLVED

Connecticut General Statutes (Rev. to 1999) § 53-21, Injury or risk of injury to, or impairing morals of, children, provides, in pertinent part

> Any person who. . .(2) has contact wit h the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child, . . . shall be guilty of a class C felony.

Connecticut General Statutes § 53a-71, sexual assault in the second degree, provides, in pertinent part

> (a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than two years older than such person; . . .

Connecticut General Statutes (Rev. to 1999) § 54-94a, conditional nolo contendere plea, Appeal of denial of motion to suppress or dismiss, provides

> When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress evidence based on an unreasonable search or seizure, motion to suppress statements and evi-

dence based on the involuntariness of a statement or motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. A plea of nolo contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution.

STATEMENT OF THE CASE

At the time the petitioner was interviewed by the police, he was 18 years and 10½ months old. The question of whether the petitioner was in custody at the time of this interview was not the dispositive issue in this matter. Rather, the dispositive issue was whether the petitioner's attorney rendered ineffective assistance of counsel by failing to tell the petitioner that by entering guilty pleas, he was giving up his right to appeal the denial of his motion to suppress his statement. Consistent with *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S. Ct. 1029 (2000), the analytical framework to resolve the issue of counsel's effectiveness focused on if a rational defendant would have wanted to appeal because, for example, there were nonfrivolous grounds for appeal. Because the only issue presented by the petitioner's motion to suppress was whether he was in custody and therefore entitled to have been given his *Miranda* warnings, the consideration of whether the petitioner was in custody was not directly implicated but was a prerequisite to the final determination of whether counsel had a constitutionally imposed duty to consult with the petitioner regarding an appeal.

A. Procedural History

The state charged the petitioner with sexual assault in the second degree, in violation of Connecticut General Statutes § 53a-71(a)(1), and risk of injury to a child, in violation of Connecticut General Statutes (Rev. to 1999) § 53-21(2). The petitioner filed a Motion to Suppress his statement to the police admitting having had sexual intercourse with his girlfriend, who was under the age of 16 at the time. After an evidentiary hearing, the trial court denied the petitioner's Motion. Respondent's Appendix, A1.

On April 14, 2000, the petitioner entered guilty pleas to both counts, which were accepted by the trial court. Thereafter, the petitioner filed a Motion to Withdraw and Vacate his pleas claiming he was denied effective assistance of counsel. He claimed that counsel was ineffective by failing to inform him that, by entering guilty pleas, he would give up his right to appeal the denial of his Motion to Suppress. The petitioner further argued that counsel should have informed him of the existence of a conditional plea of nolo contendere; Connecticut General Statutes (Rev. to 1999) § 54-94a; under which he could reserve his right to appeal the denial of his Motion to Suppress. On June 19, 2000, the trial court denied the Motion to Withdraw and sentenced the petitioner to a total effective term of incarceration of 10 years, execution suspended after 9 months, and 10 years probation.

B. Facts Pertinent To The Motion To Suppress

On April 13, 2000, the trial court, *Turner, J.*, held an evidentiary hearing on the petitioner's Motion to Suppress. The petitioner claimed that his statement to the police was inadmissible because he had been interrogated at the police station, under circumstances from which it could be inferred that he was in custody, without having been notified of his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966). The petitioner testified in support of his Motion and the state presented the testimony of Sergeant Mark McDaniel in opposition.

The petitioner testified that he attended grammar school in Jamaica and had lived there for 16 years.[1] Thereafter, he attended high school in Bridgeport, Connecticut and, at the time of his testimony in support of his Motion to Suppress, was a freshman at Dowling College.

With regard to his statement to the police, the petitioner testified that on December 12, 1998, the day after his father received a telephone call from McDaniel, he, his father and aunt voluntarily went to the police station because his father had been told that the police wanted to speak with him. After McDaniel greeted the petitioner and his family, McDaniel told the petitioner that he wanted to speak with him. At the time of the interview, the petitioner was 18 years, 10½ months old and had never previously been to a police station.[2]

The petitioner further testified that McDaniel brought him into a room which had a recording machine and told him that he needed to speak with him to gather some evidence, but that the petitioner was free to leave. McDaniel then turned on the tape recorder and repeated that the petitioner was free to leave.

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[1] The Connecticut Supreme Court, in its recitation of the facts, reports that the petitioner had been in this country for 2 years prior to being questioned by the police. This factual assertion is apparently based on the petitioner's testimony that he lived in Jamaica for 16 years. The defendant, however, did not testify that he had emigrated to the United States at the age of 16. Rather, the petitioner testified that he came to the United States in 1994. On the other hand, the date on which this testimony was elicited was April 13, 2000, and the petitioner also testified that he had come to this country 4 years earlier, which would have been 1996.

[2] Although footnote 6 of the opinion of the Connecticut Supreme Court lists the petitioner's birth date as January 2, 1980, the Original Information records his birth date as January 21, 1980. Regardless of this discrepancy, the petitioner was almost 19 years of age at the time he was interviewed by the police.

See, *State v. Turner*, 267 Conn. 414, 419 n. 6, 838 A.2d 947 (2004) (Transcribed statement). McDaniel asked the petitioner for his date of birth, if he had engaged in sexual intercourse with the victim, and when that had occurred. The petitioner responded that he had engaged in sexual intercourse with the victim on two occasions in March 1998 when the victim was 15 years old. The petitioner reviewed a transcription of the interview and stated that it was an accurate account of what had transpired.

The petitioner testified that, throughout the interview, he and McDaniel were the only people in the room. He further acknowledged that McDaniel told him several times that he was free to leave and that he was not under arrest. He also testified that McDaniel did not threaten him or pressure him into making his statement. The petitioner estimated that the interview lasted between 30 and 45 minutes.

The state presented the testimony of Sergeant Mark McDaniel. McDaniel's testimony was consistent with the petitioner's except that according to McDaniel, the interview lasted approximately 3 to 4 minutes. In addition, McDaniel testified that at no time was the petitioner under arrest or in custody and, at the end of the interview, the petitioner left the police station with his father.[3] McDaniel further testified that he did not threaten or harass the petitioner, and that they were the only two people in the room throughout the interview. McDaniel also testified that the petitioner never stated he wanted to stop the interview or that he wanted to speak with an attorney. There is no dispute that the petitioner was never given *Miranda* warnings and McDaniel testified he did not give the petitioner *Miranda* warnings because the petitioner was not in custody.

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[3] The petitioner was not arrested until December 30, 1998, eighteen days after giving his statement to the police.

In an oral memorandum of decision, the trial court, *Turner, J.*, denied the petitioner's Motion to Suppress. Respondent's Appendix at A1. In rendering its decision, the trial court found that, as a result of McDaniel's telephone call to the petitioner's home, the petitioner, his father and his aunt voluntarily went to the Bridgeport Police Department to speak with McDaniel. After McDaniel greeted the petitioner and his family, McDaniel brought the petitioner into a private and separate room with no one else present. McDaniel told the petitioner that he was trying to gather some information or evidence. McDaniel also told the petitioner several times that he was not under arrest, was not in custody and was free to leave at any time. The trial court further found that the petitioner understood that he was free to leave at any time.

The trial court found that McDaniel then asked the petitioner whether he had had sexual intercourse with the victim, and the petitioner responded accordingly. At the conclusion of the interview, the petitioner left the police station. The trial court noted that, at the time of the interview, the petitioner was an 18 year old senior in high school with no prior criminal record. The trial court also noted there was no dispute that *Miranda* warnings had not been given.

The trial court concluded the petitioner failed to sustain his burden of proving he was in custody at the time of the interview and denied the Motion to Suppress. The trial court specifically focused on the fact that the petitioner voluntarily came to the police station, that he was told several times he was not under arrest, that he was free to leave at any time, and that the petitioner indicated and acknowledged he understood what he had been told. The trial court therefore concluded that *Miranda* warnings were not required, and reiterated that an individual must be in custody before such warnings must be given.

C. Petitioner's Claim On Appeal And The Decisions Of The Connecticut Appellate Courts

In his appeal to the Appellate Court of the State of Connecticut, the petitioner claimed that the trial court had abused its discretion by denying his Motion to Withdraw his pleas due to counsel's failure to tell him that by entering guilty pleas, he was giving up his right to appeal the denial of his Motion to Suppress. *State v. Turner*, 67 Conn. App. 708, 711, 789 A.2d 1058 (2002). In order to establish an abuse of discretion, the petitioner was required to show that counsel was ineffective because he was constitutionally required to consult with the petitioner regarding his right to appeal. In order to establish that counsel was ineffective, the petitioner was required to show that a rational defendant would have wanted to appeal the denial of the Motion to Suppress. In order to establish that a rational defendant would have wanted to appeal, the petitioner was required to show, in part, that a nonfrivolous claim existed. *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S. Ct. 1029 (2000); *Ghant v. Comm'r of Correction*, 255 Conn. 1, 7, 9, 761 A.2d 740 (2000) (adopting *Roe v. Flores-Ortega*).

The Connecticut Appellate Court reversed the trial court's denial of the Motion to Withdraw, concluding

> Here, the [petitioner] was entitled to be notified of his statutory right to plead nolo contendere and to appeal from the denial of his motion to suppress under the facts of this case. This is so because it is possible that he might have prevailed on his claim that his *Miranda* rights were violated because he believed he was in custody due to his inexperience with the criminal system. Without the confession, a finding of guilty after

> a jury trial would have been problematic, and, therefore, under the analysis set forth in *Ghant*, the [petitioner] had nonfrivolous grounds for an appeal.

State v. Turner, 67 Conn. App. at 714.

After granting the state's petition for certification, a majority of the Connecticut Supreme Court reversed the Appellate Court's decision and concluded that counsel was not ineffective. As a preliminary matter, the Connecticut Supreme Court adopted the criteria articulated by this Court in *Lozada v. Deeds*, 498 U.S. 430, 432, 111 S. Ct. 860 (1991), to be used in evaluating whether a claim is frivolous in the context of an allegation of ineffective assistance of counsel for failure to consult regarding an appeal. *State v. Turner*, 267 Conn. 414, 431-32, 838 A.2d 947 (2004). The Connecticut Supreme Court thus held that in order to establish that an appeal is not frivolous as a matter of law, and that counsel had a constitutionally imposed duty to consult about an appeal, a defendant must demonstrate either that: (1) the issue is debatable among jurists of reason; (2) a court could resolve the issue in a different manner; or (3) the question is adequate to proceed further. *State v. Turner*, 267 Conn. at 433. The Connecticut Supreme Court then considered the question of whether an appeal from the denial of the Motion to Suppress would have been frivolous and concluded that "the [petitioner's] interview with the police cannot, as a matter of law, be construed as a custodial interrogation for *Miranda* purposes." *State v. Turner*, 267 Conn. at 435. The Connecticut Supreme Court based its conclusion on this Court's decisions in *Stansbury v. California*, 511 U.S. 318, 114 S. Ct. 1526 (1994), and *Oregon v. Mathiason*, 429 U.S. 492, 97 S. Ct. 711 (1977). *State v. Turner*, 267 Conn. at 435-41. The Connecticut Supreme Court reiterated that custody is determined by the application of an *objective*, rather than a subjective,

standard and that "*[T]he only relevant inquiry* is whether a reasonable person in the defendant's position would believe that he or she was in police custody of the degree associated with a formal arrest." (Emphasis in original; citations omitted.) *State v. Turner*, 267 Conn. at 439-40. With regard to the petitioner's claim that he was "a novice to police questioning," the Court ruled that "His subjective beliefs about whether he was in fact free to leave have no bearing on whether he was in custody for *Miranda* purposes." *State v. Turner*, 267 Conn. at 439.

Chief Justice William J. Sullivan filed a dissenting opinion based on his disagreement with the proposition that a "reasonable and objective test cannot take into account the defendant's status as an eighteen year old high school student who had recently emigrated to this country and had no prior experience with our legal system." *State v. Turner*, 267 Conn. at 451 (*Sullivan, J., dissenting.*) Chief Justice Sullivan's dissent relied on the Ninth Circuit Court of Appeals decision in *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002), which was recently overruled by this Court *sub nom Yarborough v. Alvarado*, 541 U.S. ___(June 1, 2004).

REASONS FOR DENIAL OF THE WRIT

A. At The Time Of His Interview, The Petitioner Was Almost 19 Years Old And Factually This Case Does Not Implicate The Concerns Expressed In *Yarborough v. Alvarado*: Therefore, No Basis For Granting Certiorari Exists

In *Yarborough v. Alvarado*, this Court did not foreclose the possibility that age, and in particular juvenile status, could be a relevant factor in determining custody. *See, Yarborough v. Alvarado*, No. 02-1684, slip op. majority op. at 12 (June 1, 2004)

(This Court "has not stated that a suspect's age or experience is relevant to the *Miranda* custody analysis.") Because the petitioner in this case was almost 19 years old at the time of his interview with the police, this case is not an appropriate vehicle to explore whether juvenile status is relevant to a custody determination. In addition, while sharing many factual similarities to *Yarborough*, this case is distinguishable in that it does not contain many of the factors that were of concern to this Court as expressed in the majority and dissenting opinions. Therefore, this case is not worthy of further review.

Although the concurring opinion in *Yarborough* states "there may be cases in which age is relevant," it concludes that because Alvarado was almost 18 years old at the time of his interview, the trial court did not err in failing to explicitly mention Alvarado's age. *Yarborough v. Alvarado*, No. 02-1684, slip op., concurring op. at 1. In addition, the dissenting opinion was greatly concerned with Alvarado's youth. *Yarborough v. Alvarado*, No. 02-1684, slip op., dissenting op. at 5-7. The petitioner in this case, however, was close to the age of 19 at the time of the interview and legally presumed to be beyond parental control.

This Court has recognized that "there *are* differences which must be accommodated in determining the rights and duties of children as compared with those of adults." (Emphasis in original.) *Thompson v. Oklahoma*, 487 U.S. 815, 823, 108 S. Ct. 2687, 2692 (1988) (*plurality opinion*). This disparate treatment reflects the "judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults." *Thompson v. Oklahoma*, 487 U.S. at 834, 108 S. Ct. at 2698. The dividing line that society has generally drawn between age of minority and adulthood is the age of 18. At that point, "it is thought reasonable to assume that persons have an ability to make, and a duty to bear responsibility for their,

judgments." *In re Stanford*, __ U.S. __, 123 S. Ct. 472, 474 (2002) (*Stevens, J., dissenting*). Having passed the age of majority, the petitioner in this case can no longer benefit from the paternalism extended to juveniles. Therefore, the concerns expressed in the concurring and dissenting opinions with regard to youth as well as parental influence are not implicated in this case.

In addition, this case is similar to *Yarborough* in that it contains the factors which the *Yarborough* majority opined indicated Alvarado was not in custody. This case is distinguishable, however, in that absent are the factors the majority opined could support a determination of custody. After reviewing the well-established principles governing custody determinations, the majority of the *Yarborough* Court concluded that "fair-minded jurists could disagree over whether Alvarado was in custody." *Yarborough v. Alvarado*, No. 02-1684, slip op., majority op. at 10. The factors weighing against a finding of custody were that (1) the police did not transport Alvarado to the police station or require him to appear at a certain time; (2) the police did not threaten or suggest that he would be arrested; (3) Alvarado's parents remained in the lobby suggesting that the interview would be brief; and, (4) Alvarado went home at the conclusion of the interview. *Yarborough v. Alvarado*, No. 02-1684, slip op., majority op. at 10-11. These facts are identical to facts in the instant case, thus supporting the conclusion of the Connecticut Supreme Court that the petitioner was not in custody.

The factors the *Yarborough* Court opined supported a determination that Alvarado was in custody were that (1) the interview lasted for 2 hours, four times longer than the half-hour interview in *Oregon v. Mathiason*, 429 U.S. 492, 97 S. Ct. 711 (1977); (2) Alvarado was not told he was free to leave; (3) the fact that Alvarado's parents brought him to the police station

made questionable the extent of Alvarado's control over his presence; and, (4) the police denied the request of Alvardo's parents to be present during the interview. *Yarborough v. Alvarado*, No. 02-1684, slip op., majority op. at 11. None of these facts are present in this case. Rather, the interview with the petitioner lasted, at most, between 30 and 45 minutes. The police also told the petitioner, the petitioner testified and the trial court concluded he understood, that he was free to leave. As discussed above, the petitioner was almost 19 years old and therefore no longer presumptively under the control of his father or aunt. Finally, there is no indication that the petitioner or his family asked to be present during the interview and that this request was denied. These facts further support the conclusion of the Connecticut Supreme Court that the petitioner was not in custody.

The petitioner also suggests that a relevant factor in determining custody should be lack of prior experience with law enforcement because of recent immigrant status. That the majority of the Connecticut Supreme Court did not consider the petitioner's prior experience in its custody determination is consistent with the *Yarborough* Court's conclusion that even as a *de novo* matter "the relationship between a suspect's past experiences and the likelihood a reasonable person with that experience would feel free to leave often will be speculative." *Yarborough v. Alvarado*, No. 02-1684, slip op. majority op. at 15.

Moreover, the dissenting opinion in *Yarborough* focused only on juvenile status. In support of its position that consideration of a person's youth should be relevant to the determination of custody, the dissenting opinion did not appear to disavow the importance of maintaining the objective test to "help[ ] keep *Miranda* a workable rule." *Yarborough v. Alvarado*, No. 02-1684, slip op., dissenting op. at 6. Rather, the dissent characterized youth as an objective circumstance that "is not a special

quality, but rather a widely shared characteristic that generates commonsense conclusions about behavior and perception" and therefore concluded that considering age would not complicate the in custody inquiry. *Yarborough v. Alvarado*, No. 02-1684, slip op., dissenting op. at 6. Prior experience with law enforcement, however, is not such a common characteristic applicable to a readily identifiable group and is too dependent upon a varying array of factors. To add prior experience as a factor would render the custody determination unworkable, would undermine "the clarity of [Miranda's] rule," would require police "to make guesses as to [the circumstances] at issue before deciding how they may interrogate the suspect"; *Yarborough v. Alvarado*, No. 02-1684, slip op., majority op. at 13-14, *citing*, *Berkemer v. McCarty*, 468 U.S. 420, 430, 104 S. Ct. 3138 (1984); and would be inconsistent with the view of the majority and dissenting opinions.

Because the petitioner in this case was almost 19 years old at the time of his interview with the police, to the extent that the *Yarborough* decision has left unresolved the issue of whether juvenile status should be a factor in determining custody, this case does not contain the factual basis to explore this issue. In addition, the facts of this case are distinguishable from *Yarborough* in that absent are any factors which would support a determination that the petitioner was in custody and therefore entitled to be given his *Miranda* warnings. Moreover, the Supreme Court of the State of Connecticut properly applied this Court's precedent. Therefore, no basis for granting certiorari exists.

B. Procedurally, The Determination Of Whether The Petitioner Was In Custody Is Not The Dispositive Issue And This Case Is Analytically Similar To *Yarborough v. Alvarado*: Therefore, No Basis For Granting Certiorari Exists

In *Yarbourough*, the dispositive issue was whether the Ninth Circuit Court of Appeals, under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, 28 U.S.C. § 2254(d)(1), improperly granted Alvarado's writ of habeas corpus based on its conclusion that the state court adjudications "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." *Yarborough v. Alvarado*, No. 02-1684, slip op., majority op. at 1, 9-10. The ultimate conclusion reached by the *Yarborough* Court was that the "state court's application of our clearly established law was reasonable." *Yarborough v. Alvarado*, No. 02-1684, slip op., majority op. at 10, 11. This conclusion was based on the *Yarborough* Court's rationale that "The custody test is general, and the state court's application of our law fits within the matrix of our prior decisions." *Yarborough v. Alvarado*, No. 02-1684, slip op., majority op. at 12. The *Yarborough* Court specifically noted that it could not "grant relief under AEDPA by conducting our own independent inquiry into whether the state court was correct as a *de novo* matter." *Yarborough v. Alvarado*, No. 02-1684, slip op., majority op. at 12.

Similarly, the petitioner's case does not present the issue of custody as a *de novo* matter. Rather, like *Yarborough*, the decision below is a result of the application of the analytical framework in the habeas context and the question of whether the petitioner was in custody has not been clearly presented. The

issue in this case is not whether the petitioner was in custody but whether the Connecticut Supreme Court properly concluded that because an appeal from the denial of the motion to suppress would have been frivolous, counsel was not ineffective for failing to discuss an appeal with the petitioner. In light of the doctrine of stare decisis, it would therefore appear that granting certiorari in this case would not advance the development of the law in this area because the ultimate question of whether the petitioner was in custody has not been clearly presented.

In addition, as a practical matter, even if this Court agreed with the petitioner and concluded that he was in custody, this determination would not dispose of the case. Rather, the result would be to permit the petitioner to withdraw his guilty pleas. Once withdrawn, the State of Connecticut would be able to able to go forward and try the petitioner. When the petitioner moved to withdraw his pleas and sought to enter a conditional plea of nolo contendere, the state informed the trial court that the petitioner had given up his right to appeal in exchange for the state recommending a lower sentence. Tr. 6/19/00, p. 10. Moreover, in order for a trial court to accept a conditional plea of nolo contendere, a ruling on the motion to suppress would need to have had a significant impact. *State v. Turner*, 267 Conn. at 424-26. As the state informed the trial court, the granting of the motion to suppress would not have precluded the state from prosecuting the petitioner because he was charged with statutory rape and the victim was available to testify. Tr. 6/19/00, p. 10. Therefore, granting further review and agreeing with the petitioner's claims might not change the result but rather, the petitioner might still ultimately be found guilty of sexual assault in the second degree and risk of injury.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

THE STATE OF CONNECTICUT

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APPENDIX

CR98-0145635

THE STATE OF CONNECTICUT	:	SUPERIOR COURT
Complainant,	:	GA 2
-VS-	:	OF FAIRFIELD
GARRICK TURNER	:	AT BRIDGEPORT
Defendant.	:	APRIL 14, 2000

(JUDGE'S ORDERS)

BEFORE: THE HONORABLE JOHN TURNER, JUDGE

APPEARANCES:

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DONALD SHEPRO, ESQ.

FOR THE DEFENDANT

Gayle Beler,

Court Monitor

THE COURT: The Court would like to begin today by rendering it's decision on the Defendant's Motion to Suppress, dated March 12th, 1999. Before doing so, the Court would just like to state for the record the facts upon which the Court is relying to support its decision in this matter. The facts were produced by the Defendant and the State at yesterday's evidentiary hearing on the Motion to Suppress Statements that were made by the Defendant while in custody and alleged to have been made before he was given his Miranda warning.

The Court finds from the evidence presented that as a result of a telephone call that was made by Detective Mark McDaniel to the Defendant's home that the Defendant, his father and his aunt went voluntarily to the Bridgeport Police Department where they asked to speak with Detective McDaniel. After being greeted by Detective McDaniel, Detective McDaniel took the Defendant into a private and separate room with no one else present and the Defendant was told the following by Detective McDaniel:

1. The Defendant was told that Detective McDaniel was trying to gather some information or evidence as it was described by the Defendant.
2. That the Defendant was not in custody.
3. That the Defendant was free to leave at any time.
4. The Defendant was asked whether he understood that he was free to go at any time. The Defendant answered yes.
5. The Defendant was shown a recording machine and told to talk into it.

The Court also finds that the Defendant was not advised that he had a right to remain silent, that anything that he said could be used against him in a court of law, that he had a right to the presence of counsel or that if he could not afford an attorney that one would be appointed for him.

The Court finds that the Defendant was told several times that he was not under arrest and that he was free to go at any time.

Among the questions that were asked and responded to by the Defendant was whether the Defendant had had sex with the victim. At the conclusion of the interview the Defendant was allowed to, and did in fact, leave the police station. At the time, the Defendant was eighteen years old, a senior in high school and he possessed no prior criminal record.

On the basis of these facts, and the State does in fact conceded [sic] that no Miranda warning was given to the Defendant. However, the protective mandates of Miranda is required and may only be invoked prior to a custodial interrogation. For the Defendant to have been eligible for the protections provided by the Miranda warnings, two things have to be established or satisfied. Those two things are that the Defendant must have been subjected to an interrogation by the police and that the interrogation must have occurred while the Defendant was in the custody of the police. And the Defendant has the burden initially of proving a custodial interrogation.

On the basis of the evidence presented and as found by the Court, the Court is satisfied that the evidence does establish that the Defendant was subjected to an interrogation and by this the Court means, and the Court means only to say, that the Defendant was subjected to expressed questioning by Detective McDaniel which Detective McDaniel should have known was likely to elicit an incriminating response from the Defendant when he asked the Defendant, among other things, whether he had had sex with victim.

Now a custodial interrogation - - and by this, the Court means did the questioning of the Defendant by the police occur

after the Defendant had been taken into custody or was otherwise deprived of his freedom of action in any significant way. Having come to the police station voluntarily, having been told several times that he was not under arrest, that he was free to leave at any time and the Defendant having indicated and acknowledged that he understood, the Court cannot conclude that the statement made by the Defendant was not made at a time when he had been taken into custody or that he was not free to leave. Taking into consideration the totality, that is all of the circumstances surrounding the Defendant's statement to the police, this Court finds that the Defendant failed to meet its initial burden of proving by a preponderance of the evidence that a reasonable person in the position of the Defendant would have believed that he was not free to leave or that he was being deprived of his freedom of action in any way.

Therefore, the Court rules that the statements made by the Defendant were not made while in custody and, therefore, a custodial interrogation requiring a Miranda warning - - for those reasons the Defendant's Motion to Suppress the statements made by the Defendant are denied.

Counsel, the Court is also aware of your contention that even if the Defendant was not in the custody of the police, if there was an interrogation, then Miranda warnings were required. I would, first of all, bring your attention to your motion to suppress which does not claim that, but it does claim that the statements were made while the Defendant was in custody. Secondly, counsel, the Court would just indicate to you that is, in fact, not the law. The law does require that the Defendant be in custody before Miranda warnings are required.

Anything further?

(End of excerpt.)

CR98-0145635

THE STATE OF CONNECTICUT	:	SUPERIOR COURT
Complainant,	:	GA 2
-VS-	:	OF FAIRFIELD
GARRICK TURNER	:	AT BRIDGEPORT
Defendant.	:	APRIL 14, 2000

TRANSCRIPT CERTIFICATION

I, Gayle Beler, Court Monitor for the GA 2 of Fairfield at Bridgeport, do certify that the foregoing transcript is a true and accurate transcription of the official recordings made in said matter.

Dated on the 18th day of April, 2000, in the City of Bridgeport, Connecticut.

/s/ Gayle Beler,
Court Monitor